

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE (GREENEVILLE)**

**IN RE: MICHAEL SCOTT CARMICHAEL CASE NO. 2:18-BK-50024-MPP
 A/K/A M. SCOTT CARMICHAEL; CHAPTER 11
 GUARDIAN ENTERPRISES OF
 ALABAMA, LLC,
 DEBTORS**

**MOTION TO DISMISS BY JP MORGAN CHASE BANK, NATIONAL ASSOCIATION
OR CONVERT CHAPTER 11 BANKRUPTCY PURSUANT TO 11 U.S.C. § 1112(b)**

Comes now JPMorgan Chase Bank, National Association, a secured creditor of the above-named Debtor, Michael Scott Carmichael a/k/a Scott Carmichael, and a party in these proceedings, (hereinafter "Movant"), by and through its attorneys, Wilson & Associates, P.L.L.C., and for its Motion to Dismiss against Michael Scott Carmichael a/k/a M. Scott Carmichael ("Debtor") states:

1. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C. § 105, 28 U.S.C. § 157(b)(2)(A), and 28 U.S.C. § 1334.
2. Debtor filed his petition commencing this case on January 5, 2018.
3. Movant is the servicer of the Deed of Trust (hereinafter "security instrument") and Note executed by M. Scott Carmichael on May 23, 2014, securing payment to First Home Mortgage Corporation, a Corporation in the principal sum of \$560,000.00. This security instrument encumbers the real property located at 2809 Stay Sail Way, Mt. Pleasant, South Carolina 29466, more particularly described as follows:

ALL that certain piece, parcel or lot of land, situate, lying and being in the Town of Mt. Pleasant, County of Charleston, South Carolina, known and designated as Lot 16 on a plat entitled "A conditional Subdivision Plat of the Harbour, Phase 4 Dunes West Being a Portion of Parcel 9 Owned by John Weiland Homes and Neighborhoods, Inc. Located in the Town of Mount Pleasant, Charleston County, South Carolina" prepared by Southeastern Surveying, Inc. dated August 19, 2004, in Plat Book EH, Page 640. Said lot having such size, shape, buttings, and boundings as will be reference to said plat more fully and at large appear.

Being the same property conveyed to M. Scott Carmichael by deed of Thomas Garian and Erin Garian dated May 23, 2014 and recorded in the Charleston County RMC Office simultaneously herewith.

Copies of the security instrument, note, and assignment of deed of trust are attached hereto and incorporated herein.

4. The unpaid principal balance of the loan at the time of filing was \$165,002.16. The subject loan is currently in default under said security instrument and note based on a failure to make the full regular monthly installment payments thereon. The total amount due on the subject loan as of July 8, 2019 was \$162,099.72, which includes principal and interest at the rate of 4.5% per annum along with applicable late charges and other recoverable amounts. Movant may also be entitled to reasonable attorney's fees and costs associated with filing this motion as set forth in the security instrument.

5. Debtor listed said property in Schedule D of his Chapter 11 Voluntary Petition. Movant would allege and aver that the current value of the collateral is \$850,000.00 per the attached Schedule D.

6. The Debtor herein is currently in default under said Deed of Trust and Note by virtue of Debtor's failure to file his Chapter 11 plan. As of July 8, 2019, Debtor is post-petition due for the May 1, 2019 payment.

7. Movant asserts that there is cause pursuant to 11 U.S.C § 1112(b)(4)(J) for the Court to dismiss or convert this case.

WHEREFORE, Movant prays that this case be dismissed with prejudice or converted, or in the alternative that Movant be awarded adequate protection payments, that it be reimbursed for its costs and attorneys' fees incurred herein, and for any and all other proper relief.

Respectfully submitted,

/s/ Luke H. Neder

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Attorneys for Movant

CERTIFICATE OF SERVICE

On September 3, 2019, copies of the foregoing Motion to Dismiss or Convert Chapter 11 Bankruptcy Pursuant to 11 U.S.C. § 1112(b), Order, and all attachments were served electronically through the electronic case filing system (ECF) or by United States Mail, postage prepaid, upon the creditors in the attached creditor matrix along with the following parties:

Ryan E. Jarrard (ECF)
Attorney at Law
2121 First Tennessee Plaza
800 S. Gay St.
Knoxville, TN 37929

Michael Scott Carmichael (U.S. Mail)
a/k/a M. Scott Carmichael
Debtor
1059 North Cedar Bluff Road, Suite 107
Knoxville, TN 37923

Guardian Enterprises of Alabama (U.S. Mail)
Debtor
1059 North Cedar Bluff Road, Suite 107
Knoxville, TN 37923

United States Trustee (ECF)
800 Market Street, Suite 114
Howard H. Baker, Jr. U.S. Courthouse
Knoxville, TN 37902

Maurice K. Guinn (ECF)
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P.O. Box 1990
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/s/ Luke H. Neder

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